being in force relating to civil procedure shall apply to all proceedings before the Court under this Act."

Accordingly, on the authority of *Parsons* v. *Mather & Platt Ltd.*[1], I hold that interest on the additional sum referred to in the consent order shall run, not from the date it was perfected or served, but from the date of its pronouncement and shall continue to run until the date of payment thereof. In exercise of my discretion under O.42 r.12 of the Rules of the High Court, 1980, I further hold that the rate of such interest should be six per cent per annum, applying by analogy the rate prescribed by s.48 of the Act.

The costs of this application will have to be paid by the Collector to the Applicant.

Order accordingly.

Solicitors: *Gan Teik Chee & Ho.*

ASIA TELEVISION LTD. & ANOR. v. MEGA VIDEO RECORDING SUPPLY CENTRE

[O.C.J. (Zakaria Yatim J.) September 14, 1984]
[Kuala Lumpur – Suit No. C1713 of 1983]

Copyright – Whether foreign copyright owners were entitled to copyright protection in Malaysia in respect of works published in Hongkong – Copyright Act, 1969, ss. 2(2)(c), 6 & 20 – English Copyright Act, 1956, s. 49 (2)(d).

Copyright – Scope of section 2(2)(c) of the Copyright Act, 1969.

The first plaintiffs were a limited company incorporated under the laws of Hong Kong with a registered office in Hong Kong. The second plaintiffs were a limited company incorporated under the laws of Malaysia with a registered office in Kuala Lumpur. The first plaintiffs claimed that they were the copyright owners of the disputed cinematograph films.

On September 15, 1980 the second plaintiffs entered into a licence agreement with the first plaintiffs whereby the second plaintiffs were granted by the first plaintiffs the exclusive rights in Malaysia to (a) distribute the said cinematograph films produced by the first plaintiffs on videogram by way of rental and (b) to produce videograms of the said cinematograph films for rental distribution.

The plaintiffs claimed that the defendants had, without licence and/or consent from the plaintiffs, infringed the first plaintiffs' copyright by reproducing for distribution the said cinematograph films and/or distributing them or exhibiting publicly the infringing copy video cassettes. The plaintiffs applied to the court and obtained an *Anton Piller* Order against the defendants. The defendants sought to set aside the said order.

Held, allowing the defendants' application: (1) there is no provision in the Copyright Act 1969 which *directly* confers copyright in Malaysia in respect of works originating in a foreign country;

(2) since the first plaintiffs were a company incorporated under the laws of Hong Kong with a registered office in Hong Kong, they could not claim copyright under the Copyright Act in Malaysia in respect of the said cinematograph films broadcast in Hong Kong;

(3) there is no evidence that Malaysia had concluded any bilateral arrangement with the United Kingdom to protect copyright of works originating in Hong Kong. Malaysia, therefore, is under no legal obligation whatsoever to protect copyright of works originating in foreign countries;

(4) since the second plaintiffs were not the authors of the said cinematograph films they could not claim any copyright in this country because copyright conferred by section 6 of the Copyright Act rests only in the author;

(5) since both the first and the second plaintiffs did not have copyright in respect of the said cinematograph films in this country, they were not entitled to the *Anton Piller* order granted on June 27, 1983. The said order should therefore be set aside.

Cases referred to :

(1) *Lee Yee Seng* v. *Golden Star Video Bhd.* [1981] 2 M.L.J. 43.
(2) *Television Broadcasts Ltd. & Ors.* v. *Mandarin Video Holdings Sdn. Bhd.* [1983] 2 M.L.J. 346.
(3) *Television Broadcasts & 2 Ors.* v. *Seremban Video Bhd.* [1985] 1 M.L.J. 171.

CIVIL SUIT.

Lim Soh Wah for the applicants/defendants.
Dato V.L. Kandan (S.F. Wong with him) for the respondents/plaintiffs.

Cur. Adv. Vult.

Zakaria Yatim J.: This is an application by the defendants to set aside an *Anton Piller* Order granted by the Court on June 27, 1983.

The relevant part of the Order is quoted below:–

"IT is ORDERED that:–

1. The Defendants whether by their partners, officers, servants or agents or any of them or otherwise howsoever be restrained by injunction from doing the following acts or any of them, that is to say:–

(a) reproducing and/or disposing of unlawfully without the licence or consent of the Plaintiffs all or any of the Plaintiffs' cinematograph films entitled as per exhibit "YYC 3" annexed to the affidavit of Yap Yee Ching affirmed on the 23rd. day of June, 1983 (hereinafter referred to as "the said cinematograph films") or the cinematograph films hereafter to be produced by the First Plaintiffs and distributed by the Second Plaintiffs in the form of video cassettes or in any other material form for purposes of rental or hire for private or domestic viewing or for any other purpose including distribution by way of trade or publicly exhibiting same for the aforesaid purposes.

(b) causing, enabling or assisting others to reproduce and/or dispose of unlawfully without the licence or consent of the Plaintiffs all or any of the said cinematograph films or the cinematograph films hereafter to be produced by the First Plaintiffs and distributed by the Second Plaintiffs in the form of video cassettes or in any other material form for purposes of rental or hire for private or domestic viewing or for any other purpose including distribution by way of trade or publicly exhibiting same for the aforesaid purposes.

(c) converting to and for their own use and purpose all or any of the said cinematograph films or the cinematograph films hereafter to be produced by the First Plaintiffs and distributed by the Second Plaintiffs in whatsoever manner including reproducing copies thereof without the licence or consent of the Plaintiffs for rental or hire for private or domestic viewing and/or for exhibition and distribution for purposes of trade.

2. The Defendants:—

(a) do forthwith deliver up and surrender to the Plaintiffs their authorised representatives or persons serving this Order for preservation pending the trial of this action all copies of the said cinematograph films whether in the form of video cassettes or in any other material form including and together with packaging labels and jacket covers for use with the said cinematograph films, invoices, bills, delivery orders and receipts which are in the possession of the Defendants, their partners, officers, servants or agents or any of them.

(b) do permit the Plaintiffs, their authorised representatives or persons serving this Order to inspect and photograph all video cassette recorders and/or equipment in the Defendants' business premises used for the purposes of reproducing copies of the said cinematograph films.

(c) do within fourteen (14) days of the date of service of this Order upon them affirm and file an Affidavit and serve a copy thereof upon the Plaintiffs' Solicitors Messrs. Shearn Delamore & Co. and Drew & Napier of No. 2 Benteng, Kuala Lumpur setting forth:

(i) the names and addresses of all persons firms or companies for whom the Defendants have reproduced the said cinematograph films.

(ii) the number of video cassettes consisting of the said cinematograph films reproduced by the Defendants for purposes of their trade or for rental or hire for domestic or private viewing.

(iii) the names and addresses of all persons, firms and companies from whom the Defendants obtained the said cinematograph films

and do exhibit thereto all relevant contracts, invoices, order forms and all other documents, or copies thereof in the Defendants', their partners, servants' or agents' possession, power, custody or control and confirm that the transactions therein appearing refer to the said cinematograph films.

3. The Defendants do permit a Solicitor from the firm of Messrs. Shearn Delamore & Co. and Drew & Napier of No. 2 Benteng, Kuala Lumpur, the Solicitors for the Plaintiffs, and one other employee of the Plaintiffs' said Solicitors, and such other persons not exceeding three (3) in number as may be duly authorised by the Plaintiffs to enter and remain upon the premises of the Defendants at No. 24 (1st. Floor), Leboh Setaka, Taman Chi Liung, Kelang and at 193A, (1st Floor), Jalan Imbi, Kuala Lumpur and at No. 643, Jalan Telok Gong, Pandamaran N.V. Kelang or at such part thereof as may be occupied or used by the Defendants, their partners, servants or agents or any of them on any weekday (including a Saturday) at any hour between 8 o'clock in the forenoon and 8 o'clock in the night for the purposes:—

(i) of taking into possession and removal therefrom into the possession and custody of the Plaintiffs' said Solicitors for preservation pending trial the video cassettes or other materials containing copies of the said cinematograph films documents and other materials that shall have been delivered up or surrendered by the Defendants, their partners, servants or agents pursuant to paragraph 2(a) hereof.

(ii) of inspecting and photographing all video cassette recorders and/or other equipment in the Defendants' said business premises used for the purposes of reproducing copies of the said cinematograph films in accordance with paragraph 2(b) hereof."

I shall now state briefly the facts of the case. The first plaintiffs are a limited company incorporated and existing under the laws of Hong Kong with a registered office at Television House, 81 Broadcast Drive, Kowloon, Hong Kong. The second plaintiffs are a limited company incorporated and existing under the laws of Malaysia with a registered office at 358 – 360, Jalan Raja Laut, Kuala Lumpur. The defendants are a business firm registered in the Registry of Business under the

name of Mega Video Recording Supply Centre and are engaged *inter alia* in rental and sales of video cassettes. Their place of business is at No. 24, Leboh Setaka, Klang.

The first plaintiffs claimed that they were the copyright owners of the cinematograph films listed in exhibit YYC 3 of the affidavit of Yap Yee Ching, the General-Manager of the second plaintiffs, dated June 22, 1983, (enclosure 6). On September 15, 1980, the second plaintiffs entered into a licence agreement with the first plaintiffs whereby the second plaintiffs were granted by the first plaintiffs the following exclusive rights in Malaysia: –

(1) To distribute the said cinematograph films and other cinematograph films to be produced by the first plaintiffs on videogram by way of rental for private and domestic viewing;

(2) To produce and/or manufacture videograms of the said cinematograph films for rental distribution.

The plaintiffs averred that the defendants had, without licence and/or consent from the plaintiffs, infringed the first plaintiffs' copyright by reproducing for distribution in material form, including in the form of video cassettes, the said cinematograph films and/or distributing by way of hire or rental trade and/or exhibiting publicly the infringing copy video cassettes. It was not disputed that the defendants had earlier a sub-licence to distribute the plaintiffs' cinematograph films but the sub-licence agreement ended on May 31, 1983. Since then the defendants had rented out, and publicly exhibited the said cinematograph films for the purposes of sale, hire or rental the infringing copies of the said cinematograph films. Based on the facts stated above, the plaintiffs applied to the Court and obtained the said *Anton Piller* Order.

The defendants' main ground for the application to set aside the order is that the provisions of the Copyright Act, 1969 do not confer copyright on the plaintiffs in respect of the said cinematograph films. Counsel for the defendants submitted that no copyright subsisted in favour of the plaintiffs. According to him the Act applies in the territory of Malaysia only. He added, however, that under section 20 of the Act, the Minister is empowered to extend the application of this Act to protect copyright in respect of cinematographs film published in Hong Kong provided that Malaysia and Hong Kong belong to the same copyright conventions. He added that Malaysia is not a party to any of the conventions and the Minister, therefore, had not made any regulation to extend the Act to Hong Kong. He argued that foreigners are not entitled to the protection of our Act except under section 6, which requires that the cinematograph films must be first published in Malaysia.

Counsel for the plaintiffs argued that the first plaintiffs, who were foreign copyright owners, were entitled to copyright protection in this country in respect of the said cinematograph films. In support of his argument he relied on the provisions of sections 2, 4, 6 and 12 of the Act. He referred to secion 4 which lists out the works, including cinematograph films, eligible for copyright. According to the plaintiffs' Counsel, the first plaintiffs claimed copyright under section 6 read with section 2. He submitted that foreign copyright owners can claim copyright under section 6 read with section 2(2) (c) of the Act, provided that their work is published in Malaysia within 30 days of its first publication overseas. He referred to exhibit YYC3 of enclosure (6) and said that according to the exhibit, the dates of publication in Malaysia and the dates of broadcast in Hong Kong were within a period of 30 days. In support of his submission he relied on three High Court decisions, namely *Lee Yee Seng* v. *Golden Star Video Bhd.*[1] ; *Television Broadcasts Ltd. & Ors.* v. *Mandarin Video Holdings Sdn. Bhd.*[2] and *Television Broadcasts & Ors.* v. *Seremban Video Centre Sdn. Bhd.*[3]

In order to determine whether the first plaintiffs are entitled to claim copyright in Malaysia in respect of their works published in Hong Kong, it is necessary to examine the relevant provisions of the Copyright Act.

Section 1 (2) states that the Act applies throughout Malaysia only. Section 3 states that, subject to this Act, no copyright shall subsist otherwise than by virtue of this Act. Under section 4 (1), works which are eligible for copyright are: (a) literary works; (b) musical works; (c) artistic works; (d) cinematograph films; (e) sound recording and broadcasts. Section 5 confers copyright on the author who is a citizen of Malaysia, a permanent resident or a "body corporate constituted and vested with legal personality under the laws of Malaysia and established in Malaysia." Section 6 is an important section which

confers copyright on the country of origin, namely, Malaysia. Sub-section 1 of that section states:–

"Copyright shall be conferred by this section on every work which is eligible for copyright and which –

(a) being a literary, musical or artistic work or cinematograph films is *first published in Malaysia;*

(b) being a work of architecture is *erected in Malaysia* or being another artistic work is incorporated in a building *located in Malaysia;*

(c) being a sound recording, is *made in Malaysia;* and

(d) being a broadcast, is *transmitted from Malaysia* and which has not been the subject of copyright conferred by section 5 of this Act." [Emphasis added].

It is clear from the provisions of the Act referred to above that the Act applies only in the territory of Malaysia. Copyright subsists only under the provisions of the Act. The Act protects works of authors who are citizens of Malaysia or permanent residents in Malaysia. It protects works of a body corporate established under the laws of Malaysia. The Act also protects copyright in respect of works originated in Malaysia. There is no provision in the Act which *directly* confers copyright in this country in respect of works originating in a foreign country.

The Minister charged with the responsibility for commerce and industry may, however, make regulations extending the application of this Act to citizens of a foreign country, foreign corporate bodies, or works first published in a foreign country, provided that country is a party to any of the copyright conventions to which Malaysia is also a party. This is clearly provided in section 20 of the Act. Section 20 states:–

"The Minister shall make regulations prescribing anything which may be prescribed under this Act and may make regulations extending the application of this Act in respect of any or all of the works referred in subsection (1) of section 4 of this Act –

(a) to individuals who are citizens of, or permanent residents in,

(b) to bodies corporate constituted and established in or under the laws of,

(c) to works, other than sound recordings and broadcasts, first published in,

(d) to works of architecture erected in, and to other artistic works incorporated in a building located in,

(e) to sound recording made in,

(f) to broadcasts transmitted from,

a country which is a party to a treaty or a member of any convention or union to which Malaysia is also a party or a member as the case may be and which provides for protection of copyright in works which are protected under this Act."

There are two multilateral treaties relating to copyright that are in force today. They are the Berne Copyright Convention as revised – the last revision being in Paris in 1971; and the Universal Copyright Convention as revised – the last revision being in Paris in 1971. Malaysia is not a party to these two conventions and the Minister cannot, therefore, make any regulations extending the application of the Act to foreign citizens or foreign corporate bodies in respect of works originating in a foreign country under section 20 of the Act. Indeed, to date, no such regulations have been made by the Minister under that section.

In view of the above provisions of the Copyright Act, it is my judgment that the first plaintiffs, who are a limited company incorporated and existing under the laws of Hong Kong with a registered office in Hong Kong cannot claim copyright in this country in respect of the said cinematograph films broadcast in Hong Kong.

Counsel for the plaintiffs contended that foreigners enjoy copyright in this country and section 20 had no purpose in the context of the present case. In support of his contention, he relied on the *Lee Yee Seng's* case, *supra.* But in that case the question before the Court was whether copyright should subsist in a work under section 6 (1) (a) of the Copyright Act if a foreigner is not a permanent resident or resident in the country. In his judgment the learned Judge referred to section 6(1) (a) which states that a copyright is conferred on a work first published in Malaysia. He then referred to section 2(2) (a) which states that "a work shall be deemed to have been published if a copy or copies thereof have been made available with the consent of the author . . ." He also referred to the definition of "author" in section 2. The learned Judge then went on to state as follows:–

"It is clear from reading the above provisions of the Copyright Act that if the publication of the video recording was in fact the first publication of such recording in this country with the consent of the author, then by virtue of section 6(1)(a) of the Copyright Act, 1969, copyright

subsists in this country . . . The word 'author' means exactly what it says . . . It does not mean a local author or an author who is a citizen nor could it mean someone who is not a foreigner."

That case is mainly concerned with the question of whether a foreigner could be conferred copyright if he is involved in the first publication of a work in Malaysia. The case did not deal with the question of simultaneous publication as provided in section 2(2)(c).

Counsel for the plaintiffs submitted that the first plaintiffs were entitled to claim copyright in this country in respect of the said cinematograph films by virtue of section 2(2)(c). As already noted section 6(1) confers copyright in respect of cinematograph films in this country if the films are first published in Malaysia. The plaintiffs argued that under section 2(2)(c) the cinematograph films were published in Malaysia within 30 days of their overseas publication and accordingly the films were deemed to be first published in Malaysia. In support of their argument, the plaintiffs relied on a passage in the judgment in the *Mandarin Video's* case, *supra.*, at page 363. In that case the learned Judge said,

"From the above provisions, it is clear that for copyright to subsist under Section 6(1), the films must be first published in this country. If there were an earlier publication elsewhere, for instance in Hong Kong as happened in all the films in the present case, such publication in Hong Kong would not be treated as the first publication if it took place within 30 days of the publication in this country . . . In other words the films must be published in Malaysia within thirty days of their being first shown in any country in this instance, Hong Kong.

Since all the films in this case were first shown in Hong Kong on television and they were all imported into this country and published within 30 days of their being shown ... their publication here became the first publication."

In that case the learned Judge relied entirely on the provisions of section 6(1) and section 2(2)(c). He did not take into consideration the provisions of section 20. It seems to me the learned Judge considered that section 2(2) (c) operates independently and need not depend on section 20.

The other case relied upon by the plaintiffs is the *Seremban Video Centre's* case, *supra.* In that case, Counsel for the defendants submitted that the first and second plaintiffs were foreign companies i.e. being companies incorporated outside Malaysia, and could not acquire any copyright in this country unless there was an executive order to extend the application of the Act to such foreign companies as a result of some international treaty signed for that purpose. The learned Judge in his judgment at pp. 172-3.

"Under section 4 of the Act, works eligible for copyright . . . expressly include cinematograph films. For the meaning of the words 'first published' occurring in section 6 of the Act . . . one must look to section 2(2) of the Act which provides that, *inter alia*, a work shall be deemed to have been published if it is made available with the consent of the Author to satisfy the reasonable requirements of the public, and that a first publication in Malaysia shall be deemed as such despite an earlier publication elsewhere so long as both publications take place within the period of 30 days . . . The case of *Lee Yee Seng* cited by Counsel was decided after the Court had considered a large number of authorities cited therein. The Court held that the Author mentioned of any eligible work need not necessarily be a citizen of Malaysia but could be a foreigner . . . Learned counsel also referred to section 20 providing for the Minister to make regulations extending the application of the Act to foreigners of a country, being a party to any treaty with Malaysia for that purpose. In my view, section 20 would apply to any work of any foreigner who cannot acquire, copyright under section 6 of the Act."

It is not clear from the judgment whether the first and second plaintiffs were companies incorporated in a foreign country namely Hong Kong. The learned Judge relied on the decision of *Lee Yee Seng's* case and came to the conclusion that foreigners were eligible for copyright if their work was first published in Malaysia (section 6(1)). Although Counsel for the defendant urged him to consider the question of simultaneous publication under section 2(2)(c) in relation to section 20 of the Act, the learned Judge did not consider it necessary to consider the point.

In the *Lee Yee Seng's* case, *supra,* as well as the *Seremban Video Centre's* case, *supra.*, the issue was whether an author can be a foreigner in respect of a work first published in Malaysia under section 6(1). The cases did not decide on the question of simultaneous publication. But in the *Mandarin Video's* case the Court dealt with the issue of simultaneous publication. The Court did so under section 2(2)(c) of the Act. In the instant case Counsel for the plaintiffs also relied on section 2(2)(c) in order to establish simultaneous publication. It is clear to me that both the *Mandarin Video's* case, *supra,* and the submission of Counsel for the plaintiffs in the present case relied entirely on section 2(2)(c) for the purpose of establishing simultaneous publication.

It is, therefore, necessary to examine the

provisions embodied in section 2(2)(c) of the Act, which are quoted below:—

"(c) a publication *in any country* shall not be treated as being other than the first publication by reason only of an earlier publication elsewhere, if the two publications took place within a period of not more than thirty days. "[Emphasis added].

During the hearing of this application, I asked both Counsel for the plaintiffs and the defendants what they understood the words "in any country" and "elsewhere" to mean in the context of the present case. Counsel for the defendants told me that "in any country" should mean either Hong Kong or Malaysia. He said that the word "elsewhere" could not mean Hong Kong or Malaysia. It should mean Indonesia or Singapore. On the other hand, Counsel for the plaintiffs said that the phrase "in any country" should mean Malaysia and the word "elsewhere" should be taken to mean Hong Kong. His view is consistent with the view of the learned Judge in the *Mandarin Video's* case, *supra*. In that case the learned Judge said at page 363, "If there were an earlier publication *elsewhere*, for instance, in Hong Kong as happened to all the films in the present case . . ." [Emphasis added]. Counsel for the plaintiffs went so far as to suggest that the words "in any country" should read "in this country". I cannot accept this suggestion. To alter the word as suggested would amount to usurping the function of Parliament. Only Parliament can amend the Act. The function of the Court is to interpret the Act.

In examining section 2(2)(c) of the Act, it is essential to note that the principle of simultaneous publication embodied therein was taken from the Berne Copyright Convention. According to the "Explanatory Statement" to the Bill on the Copyright Act, the "provisions of the Bill follow closely the provisions of the Berne Copyright Convention whenever necessary . . ." The provisions relating to simultaneous publication is found in Article 4(3) of the Berne Convention as revised in Brussels in 1948. When the Convention was revised in Paris in 1971, the said Article 4(3) was repeated in Article 3(4) of the revised Convention. Since Article 4(3) of the Convention, as revised in Brussels, was in force in 1969, when our Copyright Act was passed by Parliament, I propose to rely on the text of the Article. Artilce 4(3) states:—

"The country of origin shall be considered to be, in the case of published works, *the country of first publication*, even in the case of works published simultaneously in several countries of the Union which grant the same terms of protection; in the case of works published simultaneously in several countries of the Union which grant different terms of protection, the country of which the legislation grants the shortest term of protection. In the case of works published simultaneously in a country outside the Union, and in a country of the Union *the latter country shall be considered exclusively as the country of origin*. A work shall be considered as having been published simultaneously in several countries which has been published in two or more countries within *thirty days of its first publication*. "[Emphasis added].

According to Article 1 of the Convention, countries to which the Convention applies constitute a "Union".

For the purpose of section 2(2)(c) of our Act, the country of origin or first publication is one of those countries of the Union described in Article 4 (3). The phrase "in any country" in section 2(2)(c), therefore, refers to a country of origin or country of first publication. Under section 20 of our Act, that country of first publication, in the context of the Berne Convention, must be a member of the Union. Thus, when a work is first published in a country of first publication and it is subsequently published in Malaysia within a period of thirty days it is deemed to be first published in Malaysia for the purpose of section 6(1) of the Act. It follows, therefore, that the word "elsewhere" must refer to a country which is not a country of first publication.

In support of what I have stated in the preceding paragraph, I wish to refer to a similar provision in the English Copyright Act, 1956. Section 49 (2)(d) of the English Act states:—

"A publication in the United Kingdom, or in *any other country*, shall not be treated as being other than the first publication by reason only of an earlier publication *elsewhere*, if the two publications took place within a period of not more than thirty days." [Emphasis added].

The English text is almost identical to our provision except that in the former, the words "the United Kingdom" are added. Furthermore, in the English Act, the phrase "in any other country" is used instead of the words "in any country". Three leading commentators on the English Act have expressed the view that ". . . the phrase 'or in any other country' refers to a qualifying country, e.g. one to which the Act extends." See *Laddie, Prescott & Victoria*, The Modern Law of Copyright, (1980) page 170.

From the above, it is clear that the phrase "in any country" in section 2(2)(c) of our Act refers to a country of first publication and that country must be a member of the Union i.e. a party to the Berne Convention. Since Malaysia has not yet acceded to the Berne Convention, and no regulation has been made by the Minister to extend the application of the Copyright Act to any country, including Hong Kong, section 2(2)(c) is still not in operation. In other words the section cannot be invoked until the Minister makes the regulation to extend the Act to a particular country.

In my opinion, since the first plaintiffs are a company incorporated under the laws of Hong Kong with a registered office in Hong Kong, they cannot claim copyright under our Copyright Act in this country in respect of the said cinematograph films broadcast in Hong Kong.

I am unable to accept the argument that section 2(2)(c) stands on its own and does not depend on section 20 of the Act. If section 2(2)(c) applies independently on its own without any reference to section 20, then the Copyright Act will be protecting the copyright of works in all foreign countries, because the foreign works are deemed to be published in this country if the works are published in Malaysia within a period of thirty days of first publication in those countries. If this argument is accepted, then Malaysia will be unilaterally protecting works of foreign origin including works published in Hong Kong without reciprocity from those countries. There is no evidence that Malaysia had concluded any bilateral arrangement with the United Kingdom to protect copyright of works originating in Hong Kong. Malaysia, therefore, is under no legal obligation whatsoever to protect copyright of works originating in foreign countries.

The next question to consider is whether the second plaintiffs can claim copyright in this country in respect of the said cinematograph films. The second plaintiffs are a limited company incorporated in Malaysia with a registered office in Kuala Lumpur. Under the agreement concluded between the first plaintiffs and the second plaintiffs dated July 27, 1982 [Exhibit YYC-5 attached to the affidavit of the General-Manager of second plaintiffs (enclosure 4)] the second plaintiffs were appointed a licencee and granted an exclusive license to distribute the programmes on video cassettes by way of rental for private viewing within Malaysia and to produce and manufacture videograms for such distribution. The agreement expressly stated that "It is mutually agreed that this agreement does not confer upon the licencee any of the copyright and/or other rights subsisting in the Programmes . . ." In fact, in his affidavit (enclosure 4) the General-Manager of the second plaintiffs admitted that "The First Plaintiffs own the Copyright and my company has the exclusive right to reproduce in whatever form for distribution . . ." He also admitted that the first plaintiffs were the makers of the said cinematograph films. There is no doubt that the authors of the said films were the first plaintiffs and not the second plaintiffs. Under section 2 of the Copyright Act, the word "author" means in the case of a cinematograph film or sound recording, the person by whom the arrangement for the making of the films or recording were undertaken. Since the second plaintiffs are not the authors of the said cinematograph films they cannot claim any copyright in this country because copyright conferred by section 6 of the Act vests only in the author. [See section 12 (1)].

Since both the first and the second plaintiffs do not have copyright in respect of the said cinematograph films in this country they are not entitled to the *Anton Piller* Order granted on June 27, 1983.

For the reasons stated above, I order that the *Anton Piller* Order dated June 27, 1983 be set aside. The cost of this application will be costs in the cause.

Order accordingly.

Solicitors: *Lim Soh Wah & Partners; Shearn Delamore & Co. and Drew & Napier.*